

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.5944 OF 2014

1. Mahananda w/o Umesh Gulve,
Age 42 years, Occu.Agriculture
and Housewife
2. Umesh s/o Adinath Gulve,
Age 46 years, Occu. Agriculture
3. Ganesh s/o Umesh Gulve,
Age 21 years, Occu.Agriculture
4. Yogesh s/o Umesh Gulve,
Age 18 years, Occu.Agriculture

All R/o village Jamb, Taluka Bhoom,
District Osmanabad

..Petitioners

Versus

- Vinod s/o Govindrao Bhanushali,
Age 42 years, Occu.Business,
R/o Barshi Market yard,
Shambulal and Company,
Barshi, Taluka Barshi,
District Solapur

..Respondent

Mr V.S.Undre, Advocate for petitioners
Mr B.M.Dhanure, Advocate for respondent

CORAM : SUNIL P.DESHMUKH, J.

DATE : 3rd February 2015

ORAL JUDGMENT

1. Rule. Rule returnable forthwith and with the consent of parties,
heard finally.
2. The petitioners-original defendants, aggrieved by order dated
4th March 2014 on application Exh.101 in Regular Civil Suit No.179 of
2011 by learned Joint Civil Judge, Junior Division, Bhoom, rejecting

their request for letting them adduce secondary evidence are before this Court.

3. Briefly stated, it is the contention of petitioners, two suits are being simultaneously prosecuted, one at the instance of petitioners for redemption of mortgage and another at the instance of respondent for declaration of ownership and perpetual injunction in respect of same property. Both the suits have been directed to be tried together under an order of learned District Judge-1, Osmanabad with a further direction to dispose of the same within a period of two months from 13th February 2013.

4. During the course of proceedings, the petitioner No.1 - defendant No.1 in Regular Civil Suit No.179 of 2011 had moved application Exh.101 for leading secondary evidence in respect of sale-deeds referred to in the application, for, those are important are in possession of the purchaser and as such, out of reach of the petitioners and the petitioners have already produced certified copies of said documents.

5. The request of the petitioners had been objected to by the plaintiff in Regular Civil Suit No.179 of 2011 referring to that the sale-deeds may be in possession of the purchaser, however, required procedure will have to be followed by filing application for issuance of summons to the purchaser and that the defendants have not taken out summons to the purchaser.

6. Learned Judge of the trial court has rejected the request for the present petitioners-defendants have not complied with the procedure under provisions of Section 66 of the Evidence Act to lead secondary evidence.

7. I have heard the respective parties at considerable length. In my estimate, it would be expedient and in the interest of justice that the request being mainly declined for non-following the procedure under Section 66 of the Evidence Act, the petitioners would deserve an opportunity to comply with the same.

8. In view of aforesaid, the impugned order dated 4th March 2014 below Exh.101 in Regular Civil Suit No.179 of 2011, passed by the learned Joint Civil Judge, Junior Division, Bhoom, is set aside. The application Exh.101 is restored to its position, as had been subsisting immediately before the date on which the impugned order is passed.

9. Counsel for petitioners seeks leave to amend the application. It is open for petitioners to apply for the same before trial Court.

10. The petitioners-defendants be given an opportunity to comply with the requisite procedure for adducing the secondary evidence and as may be considered appropriate by the Court. After following the procedure, the application be considered *de novo* and decided on its own merits, as early as possible, preferably within a period of three months from the date of receipt of writ of this order. The time limit prescribed in the order of learned District Judge-1 would be operative after the decision on application Exh.101.

11. Petition with directions aforesaid, stands disposed of.
Accordingly, Rule made absolute to the extent above.

(SUNIL P.DESHMUKH, J.)

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